

No. 22,417

---

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

NATIONAL LABOR RELATIONS BOARD,  
Petitioner

v.

C & C PACKING COMPANY, Respondent

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD

---

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

---

ARNOLD ORDMAN,  
*General Counsel,*

DOMINICK L. MANOLI,  
*Associate General Counsel,*

MARCEL MALLET-PREVOST,  
*Assistant General Counsel,*

ALLISON W. BROWN, JR.,  
JOSEPH C. THACKERY,  
*Attorneys,*

*National Labor Relations Board.*

FILED

JUN 12 1968

WM. B. LUCK, CLERK



## INDEX

	Page
1. Respondent's attack on union authorization cards . . . . .	1
2. Respondent's challenge of the reliability of the card check . . . . .	4
3. Respondent's contention that the General Counsel failed to show its lack of good faith . . . . .	5
4. Respondent's contention that the Trial Examiner exhibited "the appearance of a partisan tribunal" . . . . .	6
Conclusion . . . . .	7
Certificate . . . . .	7

## AUTHORITIES CITED

Cases:	Page
Aaron Bros. Co., 158 NLRB 1077 . . . . .	1
Cumberland Shoe Corp., 144 NLRB 1268, enf'd, 351 F. 2d 917 (C.A. 6) . . . . .	3
Dixon Ford Shoe Co., Inc., 150 NLRB 861 . . . . .	2
H & W Const. Co., Inc., 161 NLRB No. 77, 63 LRRM 1346 . . . . .	1-2
Joy Silk Mills, Inc. v. N.L.R.B., 185 F. 2d 732 (C.A.D.C.), cert. den., 341 U.S. 914. . . . .	4
Kellogg's, Inc., 147 NLRB 342, enf'd 347 F. 2d 219 (C.A. 9) . . . . .	2, 5
Jas. H. Matthews & Co. v. N.L.R.B., 354 F. 2d 432 (C.A. 8), cert. den., 384 U.S. 1002 . . . . .	4
N.L.R.B. v. Bedford-Nugent Corp., 317 F. 2d 861 (C.A. 7) . . . . .	3
N.L.R.B. v. Carpenters Local 2133, 356 F. 2d 464 (C.A. 9) . . . . .	6
N.L.R.B. v. Geigy Co., Inc., 211 F. 2d 553 (C.A. 9), cert. den., 348 U.S. 821 . . . . .	4
N.L.R.B. v. Greenfield Components Corp., 317 F. 2d 85 (C.A. 1) . . . . .	4
N.L.R.B. v. Harrah's Club, 362 F. 2d 425 (C.A. 9), cert. den., 386 U.S. 915 . . . . .	6
N.L.R.B. v. Lewisburg Chair & Furniture Co., 230 F. 2d 155 (C.A. 3) . . . . .	6
N.L.R.B. v. Lovvorn, 172 F. 2d 293 (C.A. 5) . . . . .	3



Cases (Continued)	Page
N.L.R.B. v. Luisi Truck Lines, 384 F. 2d 842 (C.A. 9) . . . . .	6
N.L.R.B. v. Phaostron Instrument & Elec. Co., 344 F. 2d 855 (C.A. 9) . . . . .	6
N.L.R.B. v. Security Plating Co., 356 F. 2d 725 (C.A. 9) . . . . .	4
N.L.R.B. v. Southland Paint Co. (C.A. 5), No. 24275, decided May 8, 1968, 68 LRRM 2169 . . . . .	3
N.L.R.B. v. Trimfit of Calif., 211 F. 2d 206 (C.A. 9) . . . . .	4
N.L.R.B. v. U. S. Divers Co., 308 F. 2d 899 (C.A. 9) . . . . .	6
Pyne Moulding Corp., 110 NLRB 1700 . . . .	1
Retail Clerks Union, Local No. 1179 v. N.L.R.B., 376 F. 2d 186 (C.A. 9) . . . .	5-6
Snow v. N.L.R.B., 308 F. 2d 687 (C.A. 9) .	2, 5, 6
Textile Workers Union v. N.L.R.B., 386 F. 2d 790 (C.A. 2) . . . . .	2

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, <u>et seq.</u> ) Section 8(a)(5) . . . .	1
---	---

1	1867	1868	1869	1870	1871	1872	1873	1874	1875	1876	1877	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	2970	2971	2972	2973	2974	2975	2976	2977	2978	2979	2980	2981	2982	2983	2984	2985	2986	2987	2988	2989	2990	2991	2992	2993	2994	2995	2996	2997	2998	2999	3000	3001	3002	3003	3004	3005	3006	3007	3008	3009	3010	3011	3012	3013	3014	3015	3016	3017	3018	3019	3020	3021	3022	3023	3024	3025	3026	3027	3028	3029	3030	3031	3032	3033	3034	3035	3036	3037	3038	3039	3040	3041	3042	3043	3044	3045	3046	3047	3048	3049	3050	3051	3052	3053	3054	3055	3056	3057	3058	3059	3060	3061	3062	3063	3064	3065	3066	3067	3068	3069	3070	3071	3072	3073	3074	3075	3076	3077	3078	3079	3080	3081	3082	3083	3084	3085	3086	3087	3088	3089	3090	3091	3092	3093	3094	3095	3096	3097	3098	3099	3100	3101	3102	3103	3104	3105	3106	3107	3108	3109	3110	3111	3112	3113	3114	3115	3116	3117	3118	3119	3120	3121	3122	3123	3124	3125	3126	3127	3128	3129	3130	3131	3132	3133	3134	3135	3136	3137	3138	3139	3140	3141	3142	3143	3144	3145	3146	3147	3148	3149	3150	3151	3152	3153	3154	3155	3156	3157	3158	3159	3160	3161	3162	3163	3164	3165	3166	3167	3168	3169	3170	3171	3172	3173	3174	3175	3176	3177	3178	3179	3180	3181	3182	3183	3184	3185	3186	3187	3188	3189	3190	3191	3192	3193	3194	3195	3196	3197	3198	3199	3200	3201	3202	3203	3204	3205	3206	3207	3208	3209	3210	3211	3212	3213	3214	3215	3216	3217	3218	3219	3220	3221	3222	3223	3224	3225	3226	3227	3228	3229	3230
---	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

No. 22,417

NATIONAL LABOR RELATIONS BOARD,  
Petitioner

v.

C & C PACKING COMPANY, Respondent

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD

---

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

---

1. Respondent attacks authorization cards in general (br. pp. 36-37) and the cards here in particular (br. pp. 21-32) as unreliable evidence of majority union representation. This attack is wide of the mark, for the Board has never asserted that authorization cards are to be preferred over a secret ballot election in determining union representation of employees. See, for example, *Aaron Brothers Company of California*, 158 NLRB 1077, 1078. For this reason an employer, upon a union's request for recognition and bargaining, is privileged to assert his good faith doubt of the union's majority based on cards and to insist upon an election, without being found in violation of Section 8(a)(5) of the Act. *Pyne Moulding Corp.*, 110 NLRB 1700, 1707, enf'd 226 F.2d 818 (C.A. 2). Accord: *Aaron Brothers*, *supra*; *H & W*

*Construction Co., Inc.*, 161 NLRB No. 77, 63 LRRM 1346, 1347; *Textile Workers Union v. N.L.R.B.*, 386 F.2d 790, 792 (C.A. 2).

But where, as here, the employer expresses no such doubt, but himself suggests and takes part in a card check by an impartial observer as a substitute for processing the union's petition to election, he cannot escape his bargaining obligation by subsequently contending that the cards evidencing majority were invalid. *Snow v. N.L.R.B.*, 308 F.2d 687 (C.A. 9) (majority established through card check by minister, followed by refusal to bargain); *Kellogg's, Inc.*, 147 NLRB 342, 346, enf'd, 347 F.2d 219 (C.A. 9) (card check by third party followed by actual bargaining and insistence on Board election by newly retained counsel); *Dixon Ford Shoe Co., Inc.*, 150 NLRB 861, 871 (card check by third party showed majority, but employer rejected results and insisted on Board election).

The record shows that respondent raised no question of card validity either before or during the April 14 card check, nor did he do so in his April 18 letter cancelling the next day's scheduled bargaining session (G.C. Exh. 21). As aptly stated by the Trial Examiner (R. 23):

Noteworthy in this letter is that there is no claim that the Union's majority was questioned or that the card count was invalid or that the employees didn't understand what they were signing or that the signatures were forged or that the cards were obtained by misrepresentation as to their purpose or that the card check was not for the purpose of obtaining majority representation.

Moreover, the letter does not square with respondent's assertion (br. p. 63), that "during every meeting with the Union [respondent] informed the union representatives that it doubted that the union actually represented the majority of its employees." For the letter frankly acknowledges that its contents "may take you by surprise," but that nevertheless an election "would probably be fair in light of the fact



that some of the employees do not want to be represented by the Union” (G.C. Exh. 21). Accordingly, because it was not until the hearing and then only on the basis of questionnaires gleaned from the employees two days before the hearing that the issue of validity was raised, the Trial Examiner limited examination respecting cards to the authenticity of the signatures and to the question whether the signers were told that the cards were *only* to get an election. See *Cumberland Shoe Corporation*, 144 NLRB 1268, enf’d, 351 F.2d 917 (C.A. 6). None of respondent’s five witnesses on this point claimed that their signatures were not authentic. Indeed, no employee was even asked that question, and no employee testified that he was told that the cards were only to get an election. Hence, even if departure from the *Cumberland* rule (see *N.L.R.B. v. Southland Paint Co.*, No. 24275, decided May 8, 1968, 68 LRRM 2169 (C.A. 5)) were to void the card of Sanchez, the only one of the five to testify that he was told the card would *enable* an election to be held (Tr. 187), this would not defeat the majority showing here, since even by respondent’s reckoning, there were but 24 employees in the unit (br. p. 5).

In addition, as pointed out in the Board’s opening brief (p. 3), the record supplies substantial support for the validity of all 15 of the cards, for (1) the Union took care that the Spanish-speaking employees were read the card’s language both in Spanish and in English (Tr. 32, 38, 84, 102-119); (2) the language of the cards made it clear that by signing the cards the employees were authorizing their immediate representation by the Union (G.C. Exh. 4-17); (3) the cards were signed over a period of nearly a month rather than in a “whirlwind campaign” of a few days,<sup>1</sup> thus providing ample opportunity for employee discussion of the merits of the Union. Accordingly, the Trial Examiner clearly acted reasonably in not permitting the record to be unduly length-

---

<sup>1</sup>Cf. *N.L.R.B. v. Lovvorn*, 172 F.2d 293, 294 (C.A. 5); *N.L.R.B. v. Bedford-Nugent Corp.*, 317 F.2d 861, 865 (C.A. 7).

ened by the employees' "afterthoughts" as to why they signed the cards. See *Joy Silk Mills, Inc. v. N.L.R.B.*, 185 F.2d 732, 743 (C.A.D.C.), cert. denied, 341 U.S. 914; accord: *James E. Matthews Co. v. N.L.R.B.*, 354 F.2d 432, 438 (C.A. 8), cert. denied, 384 U.S. 1002

2. Respondent also now challenges the reliability of the card check on the ground that Halloran was known to the Union but not to respondent and that he failed to compare handwriting in determining whether card signatures were genuine. These contentions likewise have no merit. First, Halloran had never met Benninger of the Union, had not seen Allen for a year and had never talked to him about the matters at issue here (Tr. 22). Secondly, respondent did not challenge Halloran's impartiality until the Board hearing and it was similarly content with his method of card checking, i.e., a double check that each signature corresponded to a name on respondent's list.<sup>2</sup> Finally, in the absence of a request or an objection by respondent we submit that it is immaterial that the Union did not show the cards to respondent, for the Union's expressed concern over possible reprisal was obviously one of the reasons it sought a third party observer.<sup>3</sup>

---

<sup>2</sup>Since as we note above, respondent did not dispute the authenticity of signatures even at the hearing, this could not have been of major concern to it at the card check.

<sup>3</sup>It is recognized that unless an employer challenges a union's majority at the time of request for recognition, evidence of such majority need not be produced. *N.L.R.B. v. Security Plating Company, Inc.*, 356 F.2d 725, 727 (C.A. 9); *N.L.R.B. v. Trimfit of California*, 211 F.2d 206, 209-210 (C.A. 9); *N.L.R.B. v. Greenfield Components Corporation*, 317 F.2d 85, 87 (C.A. 1); *N.L.R.B. v. Geigy Co., Inc.*, 211 F.2d 553, 555 (C.A. 9).

3. Respondent also contends the General Counsel failed to show its lack of good faith (br. p. 59, *passim*). This contention is entirely negated by the only reasons given by respondent itself for refusing to bargain, namely, that "some employees requested [respondent] to have an election as they felt that the majority of the employees did not want to be represented by the union . . ." (G.C. Exh. 21). Under such circumstances, it is immaterial that some employees may have expressed doubt about the wisdom of signing their cards, for as we pointed out in our opening brief (p. 12), it is the obligation of the employer to bargain that becomes fixed when a majority claim is made which he does not challenge. As this Court stated in *Snow v. N.L.R.B.*, *supra*, 308 F.2d at 694:

The fact as to whether an employer entertained a genuine doubt that a union represents a majority of the employees is to be determined as of the time the employer refused to recognize the union. Once it is shown that the employer entertained no genuine doubt of this kind at the time it refused to bargain, an unfair labor practice has been established. The fact that, as it later developed, there were grounds which might have created a genuine doubt at that time is immaterial.

Accord: *N.L.R.B. v. Kellogg's Inc.*, *supra*, 347 F.2d at 220 (C.A. 9).

Further, respondent's plea in mitigation of its conduct that it did not resort to acts of interference, restraint and coercion to undermine the Union and dissipate its majority (br. p. 60-61) is unavailing. Proof of good or bad faith doubt of majority status requires examination of the employer's entire course of conduct. In the instant case respondent itself gave the best possible evidence that it was aware of the Union's majority, for it suggested and freely took part in a card check which settled the matter conclusively in favor of the Union. It therefore obviously refused to bargain on April 18, because it hoped the employees would change their minds. See *Retail Clerks Union, Local 1179*

*v. N.L.R.B.*, 376 F.2d 186, 191 (C.A. 9); *Snow v. N.L.R.B.*, *supra*, 308 F.2d at 693. Accordingly there is no need in this case to look for further interference with the employees' rights to establish respondent's motivation.

4. Lastly, respondent's contention (br. p. 72) that in limiting the examination of its witnesses to relevant matters the Trial Examiner gave "the appearance of a partisan tribunal" is a common ground of complaint by the loser in any contest. *N.L.R.B. v. Lewisburg Chair & Furniture Co.*, 230 F.2d 155, 156 (C.A. 3). See also *N.L.R.B. v. Phaostron Instrument & Electronic Co.*, 344 F.2d 855, 859 (C.A. 9). As pointed out above, the Examiner properly excluded reconstructions of the intentions of card signers solicited five months after the event. His findings "exhibit careful consideration and evaluation of conflicting claims and evidence" and are therefore entitled to affirmance. *N.L.R.B. v. Harrah's Club*, 362 F.2d 425, 430 (C.A. 9); cert. denied, 386 U.S. 915. Accord: *N.L.R.B. v. Luisi Truck Lines*, 384 F.2d 842, 846-847 (C.A. 9); *N.L.R.B. v. Carpenters Local No. 2133*, 356 F.2d 464, 466 (C.A. 9); *N.L.R.B. v. U.S. Divers, Inc.*, 308 F.2d 899, 905 (C.A. 9).<sup>4</sup>

---

<sup>4</sup>Respondent's charge (br. p. 69), that the Trial Examiner stated that "even if the cards were admittedly signed under false representation, that it would not invalidate the cards or would not be sufficient to dispute the majority" is a misquotation of the record. The Examiner's statement was an analysis of the *Snow* case. He said "... in that case [*Snow*], some of the cards were admittedly signed under false representations, but that was not enough to dispute the majority." (Tr. 116-117) Here false representations were neither admitted, shown, nor even alleged until the hearing. The Examiner's rulings, we submit, correctly restrained respondent from embarking on a fishing expedition.

## CONCLUSION

For the foregoing reasons, as well as those stated in our opening brief, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

ARNOLD ORDMAN,  
*General Counsel,*  
DOMINICK L. MANOLI,  
*Associate General Counsel,*  
MARCEL MALLET-PREVOST,  
*Assistant General Counsel,*  
ALLISON W. BROWN, JR.,  
JOSEPH C. THACKERY,  
*Attorneys,*  
*National Labor Relations Board.*

May 1968

## CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered brief conforms to all requirements.

Marcel Mallet-Prevost  
Assistant General Counsel  
National Labor Relations Board

